

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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MATTHEW MENDEZ, on behalf of himself and  
all others similarly situated,

Plaintiff,

-against -

**ORDER**

CV 14-6736 (ADS) (AKT)

ENECON NORTHEAST APPLIED POLYMER  
SYSTEMS, INC., and ROBERT BARR and  
MICHAEL BARR, each in their individual and  
professional capacities,

Defendants.

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**A. KATHLEEN TOMLINSON, Magistrate Judge:**

The Court has received Defendants' letter motion requesting an Order compelling the Plaintiff to appear for a limited continued deposition. *See* DE 30. Defendants seek to question Plaintiff about T-Mobile text message records and GPS printouts which Plaintiff's counsel did not produce until after Plaintiff's initial deposition on September 1, 2015. *See id.* The Court has also received Plaintiff's opposition to the motion. *See* DE 32.

Having considered these submissions, the Court concludes that Defendants have provided adequate justification for continuing Plaintiff's deposition solely for the limited purposes set forth in their motion. *See Carmody v. Vill. of Rockville Ctr.*, No. CV05-4907, 2007 WL 2177064, at \*2 (E.D.N.Y. July 27, 2007); *Finkelstein v. Sec. Indus. Automation Corp.*, No. 05-cv-5195, 2006 WL 3065593, at \*1 (E.D.N.Y. Oct.27, 2006) ("The court must allow additional time consistent with Rule 26(b)(2) if needed for a fair examination of the deponent.") (quoting Fed. R. Civ. P. 30(d)(2)). The Court finds the arguments advanced by Plaintiff's counsel unavailing, particularly in light of the fact that (1) Plaintiff's counsel did not provide the text

message records to Defendants' counsel until September 11, 2015 even though T-Mobile provided those records to Plaintiff's counsel on May 29, 2015; and (2) Plaintiff's counsel questioned Defendants' Rule 30(b)(6) witness about text messages contained in those records.

Accordingly, Defendants' motion is GRANTED. Plaintiff is directed to appear for a continued deposition, which is to be conducted solely for the purpose of allowing Defendants to question Plaintiff about the T-Mobile text message records and GPS printouts. Plaintiff's continued deposition must be completed by the close of fact discovery, which the Court recently extended to November 6, 2015. *See* Elec. Order of Oct. 6, 2015. The remaining deadlines in the Final Scheduling Order [DE 20] are amended as follows:

**FINAL SCHEDULING ORDER:**

- All fact discovery completed by: November 6, 2015
- Moving party's Rule 56.1 Statement of Undisputed Facts must be served by: November 27, 2015
- Opposing party's Rule 56.1 Counterstatement must be served by: December 18, 2015
- Any letter request for a pre-motion conference to Judge Spatt for purposes of making a summary judgment motion must be filed by: January 4, 2016
- Proposed Joint Pre-Trial Order must be filed on ECF by: March 7, 2016
- Pre-Trial Conference will be held on: March 14, 2016 at 11 AM

**SO ORDERED.**

Dated: Central Islip, New York  
October 13, 2015

/s/ A. Kathleen Tomlinson  
A. KATHLEEN TOMLINSON  
U.S. Magistrate Judge